

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
at CHATTANOOGA

DAVID DONALDSON,)	
)	
<i>Plaintiff,</i>)	
v.)	No. 1:06-cv-234
)	<i>Chief United States District Judge Collier</i>
MASSEY & SPEEK, Attorneys at Law)	
)	
<i>Defendants.</i>)	

MEMORANDUM

David Donaldson (“Donaldson”), a *pro se* prisoner, filed a civil rights complaint pursuant to 42 U.S.C. § 1983. Donaldson has submitted a motion to dismiss without prejudice claiming he is a mental patient who knows nothing about the law (Court File No. 7).

On December 18, 2006, this Court entered an order directing Donaldson to file with the Court, within thirty (30) days from the date of the Order, a corrected complaint specifically identifying the type of complaint he was attempting to file and the authority under which he was filing his complaint.¹ In addition, Donaldson was ordered to file an *in forma pauperis* application since he had not paid the \$350.00 filing fee or filed an *in forma pauperis* application. Instead, Donaldson filed this motion to dismiss without prejudice (Court File No. 7).

Rule 41(a)(1) of the FEDERAL RULES OF CIVIL PROCEDURE provides for voluntary dismissal by a plaintiff upon filing a notice of dismissal at any time prior to service by the adverse party of an

¹Donaldson claimed his attorneys, who represented him, to some extent, in a federal criminal matter, fraudulently obtained attorney fees in the amount of \$15,000 from his sister and her husband. Donaldson file his complaint on form entitled Form to be Used by a Prisoner in Filing a Complaint Pursuant to *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388. However, Donaldson marked through the title and failed to indicate the statute or provision under which he was filing his complaint.

answer or of a motion for summary judgment. In the instant case the defendants have not been served as Donaldson has not filed a sufficient complaint nor paid the \$350.00 filing fee or submitted proper documentation requesting to proceed *in forma pauperis*. Thus, the filing of the motion to dismiss this action is timely. For the foregoing reasons, the motion to dismiss will be **GRANTED** (Court File No. 7). *See* Rule 41(a)(1). Accordingly, this action will be **DISMISSED WITHOUT PREJUDICE**. The Clerk will be **DIRECTED** to send a copy of this order to the parties and to close this file.

An appropriate judgment will enter.

/s/
CURTIS L. COLLIER
CHIEF UNITED STATES DISTRICT JUDGE